

TANZANIA / JUDGMENT

Rashid Rahim

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA THE CORRUPTION AND
ECONOMIC CRIMES DIVISION MANYARA SUB-REGISTRY AT BABATI ECONOMIC CAUSE NO. 3
OF 2023 THE REPUBLIC VERSUS RASHID RAHIM @ SAID.....1st ACCUSED
JOSHUA LAIZER 2ndACCUSED

JUDGMENT

18th March & 2nd May, 2024 Kahyoza, J.: Rashid Rahim @ Said, (Rashid) and Joshua Laizer, (the accused persons) were arraigned allegedly for trafficking in narcotic drugs; to wit transporting 320 bundles of catha edulis commonly known as khat or "mirungi", weighing 120.50 kilograms. They pleaded not guilty to the information. To prove the accused persons guilty, the prosecution summoned six witnesses and tendered eleven exhibits. The issue is whether Rashid Rahim @ Said, (Rashid) and Joshua Laizer were trafficking in khat weighing more than fifty kilograms. Rashid Rahim @ Said, (Rashid) and Joshua Laizer, were charged with the offence of trafficking in narcotic drugs contrary to section 15 (1) (a) and (3) (iii) of the Drug Control Enforcement Act, [Cap. 95, R.E. 2019] (the DCEA), read together with paragraphs 23 of the First Schedule to, and section 57(1) and 60 (2) of the Economic and Organized Crime Control Act, [Cap. 200, R.E. 2022]] (the EOCCA). The prosecution alleged that, on 25th day of December, 2022, at Kimotoro area within Simanjiro District in Manyara Region, Rashid Rahim @ Said, (Rashid) and Joshua Laizer were found conveying 320 bundles of narcotic drugs to wit; khat (Catha edulis) commonly known as "mirungi" weighing 120.50 kilograms using motor vehicle with registration No. T.225 APF make Nissan pick-up. The accused persons refuted the charges compelling the prosecution to prove the accused persons guilty beyond reasonable doubts. The Court conducted the preliminary hearing as per section 35 of the EOCCA. During the preliminary hearing and trial, the accused persons enjoyed the services of Mr. Godfrey Saro (Salo), learned advocate whom they privately engaged to represent them. The prosecution account through its witnesses were that on 25. 12.2025 at 03:00hrs on their normal duties, ACP Mahenda (Pw2), A/Insp. Yasin Mussa Mdee (Pw5) and G. 4325 CPL Salim stopped a motor vehicle driven by Rashid Rahim @ Said, (Rashid) and Joshua Laizer, being a passenger. They ordered them to disboard and inspected the vehicle. It had nothing to raise eyebrows except that its body was expanded against the manufacturer's instructions. It was raised up but its depth was shorter compared to its height from outside. During cross-examination, ACP Mahenda (Pw2) deposed the height of the body was required to be one foot and half that is 45 cm but it was increased by 15 cm. They became suspicious, since it

was at night and they had no spanner, they decided to order Rashid Rahim @ Said, (Rashid) and Joshua Laizer, to drive to Babati. They seized the motor vehicle with Reg. No. T. 225 APF by filling an emergency seizure certificate and escorted the motor vehicle to Babati. ACP Mahenda (Pw2) tendered an emergency seizure certificate as exhibit P.6 and A/Insp. Yasin Mussa Mdee (Pw5) identified it. ACP Mahenda (Pw2) deposed that the emergency seizure certificate exhibit P.6, showed that the motor vehicle with Reg. No. T. 225 APF was seized from Rashid Rahim @ Said, (Rashid) and Joshua Laizer. After they reached Babati, ACP Mahenda (Pw2) opened a police case No. BAB/IR/4246/2022, notified the OCS Babati, ASP Mremba, that he had seized a motor vehicle suspected to carry illegal goods and that he wanted to conduct a thorough inspection by opening using spanner. The OCS issued a search warrant. ACP Mahenda (Pw2) tendered the search order as exhibit P.8. A/Insp. Yasin Mussa Mdee (Pw5) found two independent witnesses, Mr. Mkande, the street executive officer (Afisa Mtendaji wa Mtaa) (Pw3) and Mr. Philipo Mganga, a carpenter. ACP Mahenda (Pw2) opened the pick up by removing the cover in the presence of Yasin Mussa Mdee (Pw5), G. 4325 CPL Salim and two independent witnesses. They saw two chambers, each with a cover tightened with a bolt. He opened them. He found bundles of fresh leaves wrapped in banana leaves, covered in the newspapers. He counted them. They were 320 bundles. ACP Mahenda (Pw2) filled form DCEA 003 indicating the number of the bundles of substance suspected to be narcotic drugs and the particulars of the motor vehicle. They signed form DCEA 003. ACP Mahenda (Pw2) identified and tendered Form DCEA 003 as exhibit P.7. He read the contents of Form DCEA 003, that is exhibit P.7. A/Insp. Yasin Mussa Mdee (Pw5) and Mr. Mkande, the street executive officer(Pw3) deposed to have witnessed the inspection and the recovery of 320 bundles of fresh leaves, goods suspected to be narcotic drug known as mirungi, from the chambers of the motor vehicle with Reg. No. T. 225 APF. After the inspection, they stocked 320 bundles of fresh leaves into three sulphate bags, which ACP Mahenda (Pw2) labeled them A, B and C and marked the police case number on each bag. He summoned and handed three sulphate bags containing 320 bundles of fresh leaves, goods suspected to be narcotic drug known as mirungi and the motor vehicle with Reg. No. T. 225 APF to the exhibit keeper, H 5871 CPL Godfrey (Pwl). ACP Mahenda (Pw2) identified the motor vehicle with Reg. No. T. 225 APF, which according to his testimony, Rashid Rahim @ Said, (Rashid) and Joshua Laizer used it to convey and transport fresh leaves of substance suspected to be narcotic drugs as exh.P. 5. He displayed the two chambers on the bed of pick up, where 320 bundles of fresh leaves suspected to be narcotic drugs were hidden. The motor vehicle with Reg. No. T. 225 APF was tendered as exhibit by exhibit keeper, H 5871 CPL Godfrey (Pwl). H 5871 CPL Godfrey (Pwl) deposed that he received 320 bundles of fresh leaves, goods suspected to be narcotic drug known as mirungi and the motor vehicle with Reg. No. T. 225 APF from ACP Mahenda on 25.12.2022 at 09:00hrs. The bundles were wrapped in banana leaves covered with newspaper and kept in three sulphate bags. The first, second and third bags were marked A, B, and C, respectively. After he cross-checked them, he registered and assigned them exhibit register number 325/2022. He labeled the bags and the motor vehicle with the exhibit register number and the police case file number. H 5871 CPL Godfrey (Pwl) identified and tendered the motor vehicle, which he said was white in colour with. Reg. No. T. 225 APF. On 27.12.2022 at 09:30 hrs, H 5871 CPL Godfrey (Pwl) handed 320 bundles of bundles of fresh leaves, goods suspected to be narcotic drug known as mirungi to police officer

No. G. 1761 D/CPL Lushita (Pw6). No. G. 1761 D/CPL Lushita (Pw6) took three sulphates containing bundles of 320 bundles of fresh leaves, goods suspected to be narcotic drug known as mirungi. He obtained a submission sample Form DCEA 0001 from the OC-CID to take the exhibit, 320 bundles of fresh leaves to the Government Chemist Officer. He went to Arusha. No. G. 1761 D/CPL Lushita (Pw6) arrived at the Arusha Government Chemist Office at 11:00 am. He met Joseph P. Shayo (Pw4), a government chemist analyst and handed him a letter from the OC-CID, Form DCEA 001 and 320 bundles of fresh leaves suspected to be narcotic drugs commonly known as mirungi. Joseph P. Shayo (Pw4) upon receipt of the documents and three sulphate bags of bundles of fresh leaves suspected to be khat (mirungi). He examined the documents and validated the exhibit. He weighed the exhibit. The exhibit weighed 120.50 kg. He took sample and sealed the remaining with a Government Chemist Agency seal. He registered and assigned a number to the exhibit. Joseph P. Shayo (Pw4) filled a receipt notification Form by indicating his name, the weight of the exhibit, the registration number and date of receipt of the exhibit. He also signed on Form DCEA 001, wrote his name, signed, and endorsed the date of receipt and stamped it. He tendered Form DCEA 001 the as exhibit P.9. He deposed that Exh.P.9 depicted the name of the police who submitted the exhibit as CpI Lushita, the police case number, the names of the accused persons and the number of the bundles submitted which were 320 bundles of fresh leaves suspected to be khat (mirungi). He prepared a sample receipt notification form to acknowledge receipt of sample, and prove that the exhibit was registered and returned to the police officer who submitted them after taking the sample. He tendered it as exhibit P. 10. No. G. 1761 D/CPL Lushita (Pw6) received the exhibit in three sulphate bags from Joseph P. Shayo (Pw4). It weighed 120.20kg as the government chemist collected a sample weighing 30grams. He drove back to Babati the same day and handed three sulphate bags to H 5871 CPL Godfrey (Pwl). After receipt of the sample, Joseph P. Shayo (Pw4) conducted a confirmatory test to establish whether the substances were "mirungi". It was a colour test. The colour changed to orange, confirming that the sample contained cathine and cathinone chemicals, found in mirungi leaves only. After the colour test, Joseph P. Shayo (Pw4) conducted another test. A second test confirmed that the substance contained cathine and cathinone chemicals. He confirmed that the leaves were khat or mirungi. He prepared a report on 9.01.2023 which he tendered as exhibit P .11. Rashid Rahim @ Said, (Rashid) (Dwl) defended himself on oath denying to have been arrested and Kimotoro area within Simanjiro district 8 and Manyara region. He deposed that he was arrested at Dar es salaam. Four Police officers transferred him from Dar es salaam to Arusha police station, later to Monduli police station. While at Monduli police station one police officer informed him that he was suspected to commit the offence of illegal hunting. He deposed that he met ACP Mahenda (Pw2) at Babati police station. Police transferred him from Monduli to Babati police station. He denied to sign exhibit P. 6 and P.7 which were the emergency search certificate (Hati ya upekuzi ya dharura) and Form DCEA 003 respectively. He testified that Lushita [No. G. 1761 D/CPL Lushita (Pw6)] took exhibit P. 6 and P.7 to the prison and requested them to sign and they refused to sign. During cross-examination, he deposed that this Court did not conduct the preliminary hearing. He deposed that he appeared before this court on 19.2.2024. He testified that he did not know why he was charged jointly with Joshua Laizer. He denied the existence of an application for destruction of 320 bundles of narcotic drugs. He denied to appear before Hon. Lusewa for

hearing of any matter. He, however, admitted to take part at destruction of 320 bundles of narcotic drugs and that he was forced to sign the destruction form before Hon. Lusewa. 9 Joshua Laizer, (Dw2) testified on oath denying to have been arrested at Kimotoro area on 25.12.2022. He deposed that he was arrested at Skulo area within Simanjiro for the offence of loitering on 24.12.2022 while going to church. He deposed that he did not see ACP Mahenda (Pw2) or A/Insp. Yasin Mussa Mdee (Pw5) when he was arrested. He testified that he did not know Rashid Rahim @ Said, (Rashid). He denied to own a motor vehicle or to have boarded a motor vehicle before he was arrested by militia men and surrendered to police who took him from Skulo to Babati. He told the court that he did not know to speak Kiswahili. He learned it in the prison. He deposed that on 18.3.2023, Wednesday, a prison officer called him and told them to meet a police officer. They met Lushita [No. G. 1761 D/CPL Lushita (Pw6)] who requested them to sign a document. They refused. He forced them to sign the document. The prisoner officer prohibited him from forcing them to sign the document. During cross-examination, he stated that the police took a document to them to sign on 18.3.2023, which was a Saturday. He insisted that 18th day of March.2023 was a Saturday, he will be liar. Having heard the evidence, it is my duty to find out whether the prosecution has established two basic elements of the offence, Rashid 10 Rahim @ Said, (Rashid) and Joshua Laizer face, which are; one, whether the accused was trafficking in narcotic drugs; and two, whether the substances suspected to be narcotic drugs were catha edulis commonly known as "khat" or "mirungi" weighing more than 50 kilograms. Rashid Rahim @ Said, (Rashid) and Joshua Laizer are arraigned with the offence under section 15 of the DCEA, which provides that-

- (a) trafficks in narcotic drug or psychotropic substance; (b)... (c) ...N/A commits an offence and upon conviction shall be sentenced to life imprisonment" (2)... N/A
- (3) For purposes of this section; a person commits an offence under subsection (1) if such person trafficks- (i)... (ii)... N/A (Hi) cannabis and or khat weighing more than fifty kilogram." It is the duty of the police to establish beyond reasonable doubt that Rashid Rahim @ Said, (Rashid) and Joshua Laizer were trafficking in khat weighing more than fifty kilogram. During the preliminary hearing the prosecution and the defence agreed not to be in dispute the fact that while on their normal duties, ACP Maheda, ii A/Insp. Yasin Mussa and G. 4325 CPL Salim arrested Rashid Rahim @ Said, (Rashid) and Joshua Laizer, at Kimotolo area within Simanjiro district and region of Manyara. ACP Maheda and A/Insp. Yasin Mussa testified as prosecution witnesses, Pw2 and Pw5, respectively. Rashid Rahim @ Said, (Rashid) and Joshua Laizer, defended themselves on oath as Dw1 and Dw2 respectively. The fact that ACP Maheda (Pw2) took the accused persons before Hon. Lusewa on 9.01.2023 and that Hon. Lusewa issued an order, Exh. P.1 vide Misc. Criminal Application No. 1/2023 was agreed by both sides not to be in dispute. The order was admitted during the preliminary hearing as exhibit P.1. In addition, during the preliminary hearing Form No. DCEA 006, the Inventory of seized exhibit for disposal and the certificate of destruction were admitted as exhibit P2 and P3, respectively. Section 35(3) of the EOCCA stipulates that once a fact or a document is admitted or agreed in the memorandum filed, that fact or document shall be deemed to have been proved. It reads- "(3) Any fact or document admitted or agreed in a

memorandum filed under this section; whether such fact or document is mentioned in the summary of evidence or not, shall be deemed to have been duly proved and it shall not be necessary to call witnesses to prove it; but if during the course of the trial the Court is of the opinion that the interests of justice so demand it may direct that any fact or document admitted or agreed in a memorandum filed under this section be formally proved (Emphasis added) Given the facts agreed not to be undisputed and the documents admitted during the preliminary hearing, it is not in dispute that Rashid Rahim @ Said, (Rashid) and Joshua Laizer, were arrested by ACP Maheda (Pw2), A/Insp. Yasin Mussa (Pw5) and G. 4325 CPL Salim at Kimotolo area within Simanjiro district and region of Manyara. Thus, the prosecution had no duty to tender evidence to prove ACP Maheda (Pw2), A/Insp. Yasin Mussa (Pw5) and G. 4325 CPL Salim arrested Rashid Rahim @ Said, (Rashid) and Joshua Laizer at Kimotolo area within Simanjiro district and region of Manyara. That fact was deemed proved under section 35(3) of the EOCCA. Even though, Rahim @ Said, (Rashid) and Joshua Laizer, agreed to have been arrested at Kimotolo(ro) area by ACP Maheda, A/Insp. Yasin Mussa and G. 4325 CPL Sali during the preliminary hearing, they refuted that fact during their defence. Rashid Rahim @ Said, (Rashid) (Dwl) 13 deposed that he was arrested at Dar es Salaam by police officers who did not disclose the reason for his arrest. He added that the police officers from Dar es salaam drove him to Arusha police station and later to Monduli before they took him to Babati police station where he met Joshua Lazer. It is at Monduli police station where one police officer told him that he was suspected to commit the offence of poaching. Joshua Laizer (Dw2) testified that he was arrested at skulo area on 24.12.203 for loitering. He denied to have been arrested by ACP Maheda, A/Insp. Yasin Mussa and G. 4325 CPL Salim. He added that he saw them for the first time where they appeared to testify before this Court. During the cross-examination, Rashid Rahim @ Said, (Rashid) (Dwl), to the dismay of this Court deposed that this Court did not conduct a preliminary hearing. He denied to know why he was charged together with Joshua Laizer (Dw2), while it is on record that he admitted during the preliminary hearing that he was arrested together with Joshua Laizer (Dw2) at Kimotoro(lo) area. Further, Rashid Rahim @ Said, (Rashid) (Dwl), refuted the existence of the order issued by the Hon. Lusewa, the residence magistrate which was admitted as Exh.P.I. He testified on oath that there was no 14 application for destruction of 320 bundles of narcotic drugs. He also denied to have entered appearance before Hon. Lusewa for hearing of the application. Rashid Rahim @ Said, (Rashid) (Dwl), was all out to challenge the contents of Exh. P.I, the court order which was admitted during the preliminary hearing. Exh. PI is a court order. It is annexed with the proceedings showing that Rashid Rahim @ Said, (Rashid) (Dwl), and Joshua Laizer (Dw2), appeared before the court of the resident magistrate, represented by Mr. Massanja, learned advocate on 9.01.2023. The proceedings on 9.01.2023 before Hon. Lusewa in the court of the resident magistrate, speak louder than Rashid Rahim @ Said, (Rashid) (Dwl)'s testimony that there was an application for destroying 320 bundles of narcotic drugs and Rashid Rahim @ Said, (Rashid) (Dwl) appeared before it. Rashid Rahim @ Said, (Rashid) (Dwl) has no chance given the evidence pointed out above and section 35(3) of the EOCCA to refute that fact. Not only that but also, Rashid Rahim @ Said, (Rashid) (Dwl)'s denial of the fact that this Court

conducted the preliminary hearing, depicts that he is not a witness of truth and erodes his credence. The record of this Court is clear as daylight that on 3.10.2023 this Court conducted the preliminary hearing in the presence of both, Rashid 15 Rahim @ Said, (Rashid) (Dwl), Joshua Laizer (Dw2) and Mr. Godfrey Salo(ro), their advocate their advocate. Rashid Rahim @ Said, (Rashid) (Dwl) cannot be allowed to disown the preliminary hearing proceedings. Rashid Rahim @ Said, (Rashid) (Dwl)'s denial of the existence of the preliminary hearing proceedings and to do that on oath proves nothing, but that, he is not a witness of truth. For that reason, his testimony cannot raise a reasonable doubt to the prosecution's evidence. I am alive of an established principle that an accused person cannot be convicted merely because he has told lies in his defence in absence of a prima facie case against him but his lies strengthen the prosecution's case. See Chhabildas D. Somaiya v. R. 19 E.A.C.A 144 and Nkanga Daudi Nkanga vs R., (Criminal Appeal 316 of 2013) [2014] TZCA 213 (21 October 2014) I wish to restate the position of the law that the prosecution is not required to prove facts or documents agreed upon or admitted during the preliminary hearing. Thus, despite the accused persons' rebuttal, I find the facts agreed or admitted during the preliminary hearing proved and no need of evidence from the prosecution to prove that; one, Rashid Rahim @ Said, (Rashid) (Dwl) and Joshua Laizer (Dw2) were arrested at Kimotoro(lo) area within Simanjiro district and region of Manyara; Two, 16 Rashid Rahim @ Said, (Rashid) (Dwl) and Joshua Laizer (Dw2) were arrested by ACP Maheda (Pw2), A/Insp. Yasin Mussa (Pw5) and G. 4325 CPL Salim; Three, Rashid Rahim @ Said, (Rashid) (Dwl) and Joshua Laizer (Dw2) appeared before the court of the resident magistrate with Mr. Massanja their advocate, where Hon. Lusewa ordered 320 bundles of Catha edulis (khat) commonly as mirungi to be destroyed. I also find it proved that after the learned magistrate ordered 320 bundles of Catha edulis (khat) commonly as mirungi weighing 120.20 kg to be destroyed, prepared the inventory of seized exhibit for destruction, Exh.P.2, tendered during the preliminary hearing. Rashid Rahim @ Said, (Rashid) (Dwl) and Joshua Laizer (Dw2) signed exhibit P.2. There is no indication that they were forced to sign the exhibit. In addition, khat or mirungi weighing 120.20 kg were destructed in the presence of Rashid Rahim @ Said, (Rashid) (Dwl), Joshua Laizer (Dw2), ACP Maheda (Pw2) and Hon. Lusewa. I find it proved that, after destruction, Hon. Lusewa prepared the certificate of destruction. The certificate of destruction was admitted during the preliminary hearing as Exh. P.3. Given the undisputed facts during the preliminary hearing, the prosecution is required to prove- 17

- 1) whether at time of arrest, Rashid Rahim @ Said, (Rashid) (Dwl) and Joshua Laizer (Dw2) were transporting 320 bundles of fresh leaves suspected to be Catha edulis (khat) commonly as mirungi;
- 2) whether 320 bundles were identified as Catha edulis (khat) commonly as mirungi;
- 3) whether 320 bundles weighed more than fifty kilograms to wit 120.50 kilograms. I will commence with the issue whether Rashid Rahim @ Said, (Rashid) (Dwl) and Joshua Laizer (Dw2) were transporting 320 bundles of fresh leaves suspected to be Catha edulis (khat) commonly as mirungi. It is not in dispute that ACP Maheda (Pw2), A/Insp. Yasin Mussa

(Pw5) and G. 4325 CPL Salim arrested Rashid Rahim @ Said, (Rashid) (Dwl) and Joshua Laizer (Dw2) at Kimotoro area within Simanjiro district and region of Manyara. ACP Maheda (Pw2) and A/Insp. Yasin Mussa (Pw5) deposed that they stopped the motor vehicle with. Reg. No. T. 225 APF. It was on 25.12.2022 at Kimotoro. They inspected it. They saw nothing illegal at that night. They became suspicions as the body of the vehicle motor vehicle was modified by increasing its body looking from outside but the depth was short. 18 They deposed that Rashid Rahim @ Said, (Rashid) (Dwl) was a driver and Joshua Laizer (Dw2) a passenger. They seized the motor vehicle and ordered Rashid Rahim @ Said, (Rashid) (Dwl) to drive to Babati police station and escorted it. They reached Babati in the morning opened the pick-up and found the chambers fixed with bolts. They opened the chambers in the presence of two independent witnesses Mr. Mkande, the street executive officer (Afisa Mtendaji wa Mtaa) (Pw3) and Mr. Philipo Mganga, a carpenter. They found 320 fresh leaves wrapped in banana leaves and covered with newspapers. Rashid Rahim @ Said, (Rashid) (Dwl) and Joshua Laizer (Dw2) disassociated themselves with the motor vehicle with. Reg. No. T. 225 APF. The defence advocate challenged the evidence of the independent witness Nkande saying that he was not independent witness as he was a government officer since he was working as a street executive officer. He argued that the prosecution ought to have summoned Mr. Philipo Mganga, a carpenter. He invited the Court to draw adverse inference for the prosecution's failure to summon Mr. Philipo Mganga, a carpenter to testify. As pointed out it is not disputed that the accused persons were arrested at Kimotoro by ACP Maheda (Pw2) and A/Insp. Yasin Mussa (Pw5) 19 and in the presence of CPL Salim. They deposed that Rashid Rahim @ Said, (Rashid) (Dwl) was a driver and Joshua Laizer (Dw2) a passenger. They narrated how they suspected them and how they inspected the motor vehicle whilst at Kimotoro and how they conducted a thorough inspection at Babati police station and in the presence of two witnesses. I have no reason to doubt their credibility. As to the accused persons' account I was unable to give it weight. The accused person told lies and they have reasons to tell lies to save their head. Not only that but also, they told lies under oath that this Court did not conduct the preliminary hearing and that they did not appear before the court of the resident magistrate when an application to dispose 320 bundles of narcotic drugs were conducted. Rashid Rahim @ Said, (Rashid) (Dwl) and Joshua Laizer (Dw2) have no duty to prove their innocence but if they tell blantant lies, their lies corroborate the prosecution's case. I also do not find merit in the defence counsel's submission that Mr. Mkande, the street executive officer (Afisa Mtendaji wa Mtaa) (Pw3) did not qualify as an independent witness as he was a government officer. Even though, Mr. Mkande, (Pw3) was a street executive officer (Afisa Mtendaji wa Mtaa), still he qualified as an independent witness. He was not a police officer and did not take part in the 20 arrest of the accused person. Both, Mr. Mkande, the street executive officer (Afisa Mtendaji wa Mtaa) (Pw3) and Mr. Philipo Mganga, a carpenter were independent witnesses and their evidence was similar. Thus, the prosecution had an option to summon one of them. I concur with the state attorney's submission that the evidence is not proved by the number of witnesses but the quality of their evidence. It is my firm view that the prosecution proved that at the time of arresting Rashid Rahim @ Said, (Rashid) (Dwl) and Joshua Laizer (Dw2), the former was a

driver and the latter, a passenger in the motor vehicle with. Reg. No. T. 225 APF. After inspection, the motor vehicle with Reg. No. T. 225 APF was found carrying 320 bundles of fresh leaves of substance suspected to be narcotic drug. I find that the prosecution established that Rashid Rahim @ Said, (Rashid) (Dwl) and Joshua Laizer (Dw2) were transporting 320 bundles of fresh leaves suspected to be Catha edulis (khat) commonly as mirungi. Were 320 bundles of fresh leaves proved to be Catha edulis (khat) commonly as mirungi? ACP Maheda (Pw2) deposed that after inspection, he handed 320 bundles of fresh leaves suspected to be Catha edulis (khat) commonly as 21 mirungi and the motor vehicle to H 5871 CPL Godfrey (Pwl), the exhibit keeper. They were packed in three sulphate bags labeled A, B, and C. H 5871 CPL Godfrey (Pwl) validated the exhibit, registered them in the exhibit register, assigned the exhibit number and labeled the three sulphate bags with the exhibit number and the police case number. He kept them. On the 27.12.2022 H 5871 CPL Godfrey (Pwl) issued the exhibits to No. G. 1761 D/CPL Lushita (Pw6) who took three sulphate bags containing fresh leaves to the government chemist office in Arusha. No. G. 1761 D/CPL Lushita (Pw6) handed three bags to Joseph P. Shayo (Pw4), government analyst. Joseph P. Shayo (Pw4), weighed, collected the sample, analyzed and confirmed that the 320 bundles of fresh leaves were Catha edulis(khat) commonly as mirungi. The defence complained that the chain of custody was broken or not established by paper trail. He submitted that there is no evidence to prove that when the exhibits were seized, the kind of exhibits seized, what exhibit were taken to the government chemist, and also how the exhibit passed hands from (Pw2) [ACP Maheda (Pw2)] to (Pwl) [H 5871 CPL Godfrey (Pwl)]. The defence added that there is no evidence on how H 5871 CPL Godfrey (Pwl) kept the exhibit and how the exhibit exchanged hands from 22 Pwl to Pw5[6] and later to (Pw4). He concluded that there are doubts as to the movement of the purported drugs and a possibility of the same being tempered with. In deed the prosecution had a duty to prove how the purported drugs were kept and changed hands from one person to another, from the time of seizure to the time the government chemist analyzed them and finally destructed. It is also settled that it is important to have the chronological documentation and or paper trail showing the seizure, custody, control, transfer, analysis and disposition of evidence to guarantee that the said evidence relates to the alleged crime, [see Paulo Maduka and 4 Others

- v. The Republic, Criminal Appeal No. 110 of 2007 (unreported)]." The prosecution did not tender a paper trail to prove the movement the substance suspected to be narcotic drugs. There is however, oral evidence to the seizure, custody, control, transfer, analysis and disposition of evidence. The prosecution witness ACP Maheda (Pw2) deposed how after inspection, on 25.12.2022 he handed 320 bundles of fresh leaves suspected to be Catha edulis (khat) commonly as mirungi and the motor vehicle to H 5871 CPL Godfrey (Pwl), the exhibit keeper. H 5871 CPL Godfrey (Pwl) validated the exhibit, registered, assigned the exhibit register number 23 labeled and kept the exhibit in the exhibit room. H 5871 CPL Godfrey (Pwl) added that on 27.12.2022 he handed three sulphate bags containing 320 bundles of fresh leaves suspected to be Catha edulis (khat) commonly as mirungi to No. G. 1761 D/CPL

Lushita (Pw6). No. G. 1761 D/CPL Lushita (Pw6) deposed how on 27.12.2022 took three sulphate bags containing 320 bundles of fresh leaves suspected to be *Catha edulis* (khat) commonly as mirungi together with a letter and Form DCEA 001 to the Government Chemist Office. He handed them to Joseph P. Shayo (Pw4), government chemist analyst. Joseph P. Shayo (Pw4), crosschecked the document and the exhibit, weighed, collected the sample from 320 bundles of fresh leaves suspected to be *Catha edulis* (khat) commonly as mirungi and analyzed the same. Joseph P. Shayo (Pw4) explained that after he collected the same, he handed the exhibit back to No. G. 1761 D/CPL Lushita (Pw6) on the same day. He signed Form DCE 001 and endorsed the stamp and returned it to No. G. 1761 D/CPL Lushita (Pw6). Joseph P. Shayo (Pw4) issued a sample receipt notification form to acknowledge receipt of sample, and proof that the exhibit was registered and returned to Lushita after taking the sample. The prosecution tendered Form DCE 001 and the sample receipt notification form as exhibit P.7 and P. 10, respectively. No. G. 1761 D/CPL Lushita (Pw6) testified that after he received three bags containing 320 bundles of fresh leaves suspected to be *Catha edulis* (khat) commonly as mirungi from Joseph P. Shayo (Pw4), he went back to Babati and handed the exhibit to H 5871 CPL Godfrey (Pw1). H 5871 CPL Godfrey (Pw1) deposed that he received three bags containing 320 bundles of fresh leaves suspected to be *Catha edulis* (khat) commonly as mirungi from No. G. 1761 D/CPL Lushita (Pw6) on 27.12.2022. He kept the exhibit until on 9.1.2023 when he issued the exhibit to ACP Maheda (Pw2) who took them to court. ACP Maheda (Pw2) took the exhibit to the court of the resident magistrate which issued the disposal order. On the very day and the presence of the accused persons, 320 bundles of fresh leaves suspected to be *Catha edulis* (khat) commonly as mirungi were destructed. The accused persons did not dispute the destruction of 320 bundles of fresh leaves suspected to be *Catha edulis* (khat) commonly as mirungi on the 9.1.2023. It proved the movement of the purported drug which on the date of destruction the Government Chemist had already confirmed that 320 bundles of fresh leaves were *Catha edulis* (khat) commonly as mirungi. It is settled that a chronological and sequence of the movement of the exhibit from one hand to another is the best evidence that the exhibit was not tampered with. I am of the firm view that despite the absence of the chronological documentation to prove the custody and 320 bundles of fresh leaves suspected to be *Catha edulis* (khat) commonly as mirungi movement, there is sufficient oral evidence to establishing how were seized, moved from one hand to another, kept analyzed and finally destructed. I do not contemplate that there was a possibility of being tampered with. It is trite law that where there is no chronological documentation or paper trail of the movement of exhibits, oral evidence on record can suffice depending on the circumstances, to prove the unbroken chain of custody. This position was taken by the Court of Appeal in Wallenstein Alvares Santillan vs R., (supra), Charo Said Kimilu and Another v R., Criminal Appeal No. 111/ 2015 (unreported) and Abas Kondo Gede v. R., Criminal Appeal No. 72/2017 (unreported). Given the fact that, the Government Chemist confirmed in his report, Exhibit P. 11, that 320 bundles of fresh leaves suspected to be *Catha edulis* 26 (khat) commonly as mirungi were actually *Catha edulis* (khat) commonly as mirungi. In addition, since the exhibit were not tempered with before they were submitted to the Government Chemist for analysis, I find

without any doubts in mind, that 320 bundles of fresh leaves recovered from motor vehicle with Reg. No. T. 225 APF were established to be *Catha edulis* (khat) commonly as mirungi. Are 320 bundles weighing more than fifty kilograms? Joseph P. Shayo (Pw4), a government chemist analyst deposed that upon receipt of the exhibit from No. G. 1761 D/CPL Lushita (Pw6), validated the exhibit and the documents of submission, and weighed it. He deposed that 320 bundles of fresh leaves weighed 120.50 kilograms. He prepared the sample receipt notification on the 27.12.2022 indicating the weight of the substance. He filed prepared a report, which he tendered as Exh. P.11. The defence said nothing and indeed, they had nothing to say as they distanced themselves with the purported drugs. I have no ground to question the Government Chemist's report as to the weight of 320 bundles of fresh leaves recovered from motor vehicle with Reg. No. T. 225 APF and established to be *Catha edulis* (khat) commonly as mirungi. I find, as reported in exh.P. 11, that 320 bundles of fresh leaves recovered from motor vehicle with Reg. No. T. 225 APF and established to be *Catha edulis* (khat) commonly as mirungi weighed 120.5 kg, thus, they weighed more than fifty kilograms. In the end, I find without hesitation that, the prosecution has proved beyond reasonable doubt that Rashid Rahim @ Said, (Rashid) and Joshua Laizer, (the accused persons) are guilty of trafficking in narcotic drugs; to wit transporting 320 bundles of *Catha edulis* commonly known as khat or "mirungi", weighing 120.50 kilograms. I convict them of the offence trafficking in narcotic drugs under section offence of trafficking in narcotic drugs contrary to section 15 (1) (a) and (3) (iii) of the Drug Control Enforcement Act, [Cap. 95, R.E. 2019] read together with paragraphs 23 of the First Schedule to, and section 57(1) and 60 (2) of the Economic and Organized Crime Control Act, [Cap. 200, R.E. 2022]. DATED at Babati this day of 2nd May, 2024. J. R. Kahyoza Judge 28 Ms. Kayumbo. SA: Your Lordship, we do not have the accused persons' previous record of conviction. We pray for stern considering the impact of the narcotic drugs to the society, especially the younger generation. Mr. Godfrey Saro Adv: Your Lordship, the accused persons are the first offender, pray for lenient sentence and they have depedants. SENTENCE The accused persons are sentenced to serve the mandatory sentence of life imprisonment for offence of trafficking in narcotic drugs, to wit; *Catha edulis* commonly known as khati or "mirungi", weighing 120.50 kilograms, contrary to section 15 (1) (a) and (3) (iii) of the Drug Control Enforcement Act, [Cap. 95, R.E. 2019] read together with paragraphs 23 of the First Schedule to, and section 57(1) and 60 (2) of the Economic and Organized Crime Control Act, (Cap. 200, R.E. 2022). J. R. Kahyoza Judge 2/05/2024 29 Court: I intend to make forfeiture orders of the Exh. P.5, the motor vehicle, with Reg. No. T. 225 APF. May invite you to address me on that. Ms. Kayumbo. SA: Your Lordship, since the accused has been convicted, we pray the motor vehicle with Reg. No. T. 225 APF to be forfeited to the government of Tanzania. We make the prayer under section 351 (l)CPA and section 49 of the Drug Control Enforcement Act, [Cap. 95, R.E. 2019]. Mr. Godfrey Adv: Your Lordship, I object to the prayer made by the prosecution until ownership I proved. Court: The motor vehicle exhibit P. 5 with Reg. No. T. 225 APF shall be forfeited to the government after six months from today unless an application is filed a person claiming to be owner in terms of section 49A of the Drug Control Enforcement Act, [Cap. 95, R.E. 2019] or the Proceeds of Crime Act, [Cap.256 R.E. 2022] and ordered otherwise.

J. R. Kahyoza Judge 2/05/2024 Court: Judgement delivered in the presence of the accused persons and their advocate Mr. Godfrey Salo and Ms. Kayumbo, State Attorney for the Republic. Right of appeal explained. B/C Ms. Fatina (RMA) present. 30 J. R. Kahyoza Judge 2/05/2024 31

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